

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:09-00137

JOSEPH CLEVELAND FERRELL
SOUTHERN AMUSEMENT CO., INC.

MOTION OF UNITED STATES REGARDING
PRE-TRIAL RESTRAINING ORDER

Now comes the United States of America, by Hunter P. Smith Jr., Assistant United States Attorney for the Southern District of West Virginia, and, following the return of a superseding indictment in this case, moves the Court to order that the Pre-Trial Restraining Order entered by this Court on June 8, 2009, remain in full force and effect as to the assets described in Exhibit A thereto.

In support thereof, the United States represents as follows:

1. On June 3, 2009, a federal grand jury in the Southern District of West Virginia returned, under seal, an indictment charging defendants with certain violations and alleging that certain assets were subject to forfeiture.

2. Upon return of that indictment the United States moved the Court for a restraining order to preserve, pending judgment, the availability and value of all business, financial, and real property assets listed in Exhibit A attached to that order.

3. The superseding indictment alleges as subject to forfeiture the same assets which were the subject of the forfeiture allegations in the original indictment. That is, the assets listed in paragraphs 1 and 2 of Exhibit A (seven pieces of real property and shares of stock in Southern Amusement, Co., Inc.) are alleged to be forfeitable based upon the predicate crime of racketeering in violation of 18 U.S.C. § 1963(c), and the gambling devices listed in paragraph 3 of Exhibit A are alleged to be forfeitable based upon the predicate crime of failing to register gambling devices in violation of 15 U.S.C. § 1173.

4. The changes in the racketeering and failing to register gambling devices violations as alleged in the superseding indictment are relatively minor and do not affect the basis of the forfeiture. The main changes to the racketeering charge were the rearrangement of the predicates and the addition of sub-predicates 11b and 11c. In the failing to register gambling devices charge, paragraph 1 was slightly rewritten. None of these changes alters the basis for the forfeiture allegations or the description of the assets subject to forfeiture.

5. In paragraph 5 of the order entered on June 8, 2009, this Court provided that "the Court shall issue any further orders necessary to effectuate the terms and/or purposes of this Order, which purposes include preserving the availability and value of the Subject Assets." The United States believes that even upon the filing of the superseding indictment in this case the Court's order

remains in full force and effect, but it seeks this further motion to ensure that the assets listed in Exhibit A remain available for forfeiture pending the outcome of this case.

For these reasons, the United States respectfully moves this Court to order that the Pre-Trial Restraining Order entered by this Court on June 8, 2009, remain in full force and effect as to the assets described in Exhibit A thereto.

Respectfully Submitted,

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United States Attorney

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CERTIFICATE OF SERVICE

It is hereby certified that service of the foregoing "MOTION OF UNITED STATES REGARDING PRE-TRIAL RESTRAINING ORDER" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing on this 1st day of October, 2009, to:

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